and the Ordinance under which the respondent had been originally charged should be shown as I think that the Judge before granting an application of this nature would normally like to call for the records to satisfy himself that there are possible reasonable grounds for interfering with the acquittal of one of His Majesty's subjects. However, in this case I am satisfied that the posting book has been checked and that the amount of opium, namely 12 tahils, does not fall within the maxim *de minimis* and I would grant the application.

I would also hope that this matter is brought to the notice of the Comptroller of Posts as it would seem to me disastrous and likely to reduce Government business to chaos if Government correspondence should take from the 27th of August, 1962, to the 6th of September, 1962, to travel from Johore Bahru to Batu Pahat.

Application granted.

ANGLO-AMERICAN CORPORATION LTD. v. SINGAPORE PRODUCE CO.

[O. C. J. (Buttrose J.) September 26, 1962]

[Singapore — Suit No. 1155 of 1960]

Contract — F.O.B. — Contract executors — Breach — Action for damages — Whether contract for delivery of rubber illegal — Whether licence under Rubber Dealers Ordinance necessary — Rubber Dealers Ordinance (Cap. 199), ss.2, 3 and 18 — Rubber Dealers (Forms) Rules, 1940 — "Purchase rubber" — Meaning of — Rubber Dealers (Amendment) Ordinance, 1962.

Interpretation — Legislative Enactment authoritatively interpreted by judicial decision or by long course of practice used to interpret subsequent legislation.

The plaintiffs by a contract dated July 4, 1960 agreed to sell and the defendants agreed to buy 50 tons of No. 5 R.S.S. Rubber (July 1960) at $1.09¾ per lb. The plaintiffs alleged that the defendants wrongfully neglected or refused to accept or give shipping instructions or pay for the goods whereby the plaintiffs suffered damage. The market or current price at the time when the goods ought to have been accepted was $0.98¾ per pound and the difference between the contract price and the market price in respect of the 50 tons of rubber was $12,460 and this was agreed by the defendants. The defendants admitted the contract and that they bought the rubber but they refused to take delivery as they maintained that the contract was illegal because they were not licensed under the Rubber Dealers Ordinance to purchase rubber.

Held: the contract was a F.O.B. contract executory in its terms which did not involve delivery at the time it was made and accordingly the contract was not illegal because of the defendants' failure to have a licence under section 3 of the Rubber Dealers Ordinance. It is only when the purchaser seeks to take delivery of specific rubber by way of completion of a contract that he is bound to have a licence to take the delivery and a licensed store into which the goods may be delivered.

The statement in the judgment of Griffith C.J. in *D'Emden* v. *Pedder* (5) appearing at p. 110 with respect to interpretation of statute adopted.

Cases referred to:—

(1) *Syn Thong & Co.* v. *Tong Joo (Hoo) & Co.* [1929] S.S.L.R. 39.

(2) *Stanton Nelson & Co. Ltd.* v. *Mizrahie* [1958] M.L.J. 45, 47, 48 & 49; [1958] M.L.J. 97, C.A.

(3) *Chai Sau Yin* v. *Liew Kwee Sam* [1962] M.L.J. 152.

(4) *Webb* v. *Outrim* [1907] A.C. 89.

(5) *D'Emden* v. *Pedder* (1904), 1 C.L.R. 91, 110.

(6) *Ng Kean Tek* v. *Kam Hock Lye* [1950] M.L.J. 280.

ACTION FOR DAMAGES.

J. E. Lloyd for the plaintiff.

L. A. J. Smith for the defendant.

Cur. Adv. Vult.

Buttrose J.: This is an action for damages for breach of contract. The plaintiffs' claim was that by a contract in writing dated the 4th July, 1960, they agreed to sell and the defendants agreed to buy 50 tons of No. 5 R.S.S. Rubber (July, 1960) at a price of $1.09½ per pound. They alleged that the defendants wrongfully neglected or refused to accept or give shipping instructions or pay for the goods whereby the plaintiffs suffered damage. The market or current price at the time when the goods ought to have been accepted was $0.98¾ per pound and the difference between the contract price and the market price in respect of the 50 tons of rubber was $12,460 and this was agreed by the defendants.

The defendants while admitting the contract and that they bought the rubber refused to take delivery as they maintained the contract was illegal because they were not licensed under the Rubber Dealers Ordinance (Chapter 199), hereinafter referred to as 'the Ordinance', to purchase rubber.

The position was that the defendants originally had a licence to ship rubber in 1959 but at the date of the present contract it had expired and it was only after the contract had been entered into that they acquired a new licence to ship rubber. The defendants never at any time had a licence to purchase rubber.

The Secretary of the Malayan Rubber Export Registration Board established under the Rubber Shipping and Packing Control Ordinance (Chapter 183) gave evidence that in July, 1960, the defendants applied for a licence to ship rubber for export and it was issued to them on the 14th July, 1960. He said his Board was not concerned to ascertain if the applicant has a licence to purchase rubber.

Section 3 of the Ordinance provides that no person shall purchase, treat or store rubber unless he shall have been duly licensed in that behalf by a licensing officer. The meaning the words "purchase rubber" bear in that section were considered over thirty years ago in the case of *Syn Thong & Co.* v. *Tong Joo (Hoo) & Co.* (1) and that and subsequent decisions were reviewed in *Stanton Nelson & Co. Ltd.* v. *Mizrahie* (2) at pages 47, 48 and 49.

The effect of those decisions was that the words "purchase rubber" as used in section 3 of the Ordinance refer to present purchases of the commodity completed by delivery and not to forward or executory contracts to purchase unascertained rubber by description which do not

involve delivery at the time they were made. It is only when the purchaser seeks to take delivery of specific rubber by way of the completion of a contract to purchase that he is bound to have a licence to take delivery and a licensed store into which the goods may be delivered. These decisions have stood for over thirty years and although the *Stanton Nelson* case to which I have referred went to the Court of Appeal ([1958] M.L.J. 97) it was decided on an entirely different ground.

The present contract was a forward F.O.B. contract executory in its terms which did not involve delivery at the time it was made and accordingly, in my view, the contract was not illegal because of the defendants' failure to have a licence under section 3 of the Ordinance.

The Privy Council case of *Chai Sau Yin* v. *Liew Kwee Sam* [3] relied on by the defendants was an action for the price of rubber sold and delivered. It was a present purchase of the commodity followed by delivery and is, I think, clearly distinguishable from the present case.

Now the legislature must be taken to have been aware that for the past thirty years or more the Courts have held that section 3 of the Ordinance did not apply to forward contracts for the purchase of rubber. I think I am entitled to draw the inference that the legislature well knew of the interpretation placed on section 3 of the Ordinance by the Courts and although it had the Ordinance before it on some six or seven occasions since 1929 it failed to make any other provision.

This year, however, as the result, according to Mr. Lloyd, of it being hinted by the Court of Appeal in *Stanton Nelson & Co. Ltd.* v. *Mizrahie* to which I have already made reference that the Court might come to another view the legislature stepped in and put the matter beyond any possibility of doubt by the Rubber Dealers (Amendment) Ordinance, 1962 (No. 18 of 1962). This Ordinance provides that "purchase" means purchase of specific rubber pursuant to any contract or agreement providing for completion by delivery of such rubber but does not include purchase of unascertained rubber by description by means of a forward contract.

The judgment of the Court of Appeal in the *Stanton Nelson* case was delivered by Whyatt C.J. and while, as I have said, it was decided on another point in so far as it relates to the question we are now considering is confined to one short paragraph at p. 102 of the report cited above. I feel bound to say with the greatest respect that it is, in my opinion, singularly unhelpful and adds nothing to the subject.

In *Webb* v. *Outrim* [4] the Earl of Halsbury quoted with approval the words of Griffith C.J. in *D'Emden* v. *Pedder* [5] that "When a particular form of legislative enactment which has received authoritative interpretation, whether by judicial decision or by a long course of practice is adopted in the framing of a later statute, it is a sound rule of construction to hold that the words so adopted were intended by the legislature to bear the meaning which has been so put upon them."

Moreover, the Ordinance read as a whole is clearly concerned with physical rubber as defined in section 2, delivered to a person. The rules made under section 18 of the Ordinance, namely, the Rubber Dealers (Forms) Rules, 1940 are all directed to the physical possession of rubber.

In *Ng Kean Tek* v. *Kam Hock Lye* [6] Jobling J. said "the case" — referring to *Syn Thong & Co.* v. *Tong Joo, supra* — "laid down that a licence under the Rubber Dealers Ordinance for the purchase of rubber is necessary when the purchaser takes delivery but not before. It is clear then that the contract (which was for the delivery of rubber) was not illegal when entered into.....".

For these reasons, therefore, I am of the opinion that the contract in the present case is not illegal and is enforceable and there must accordingly be judgment for the plaintiffs for the amount claimed, namely, $12,460 and costs.

Judgment for the plaintiff.

Solicitors: *Drew & Napier; L. A. J. Smith.*

TAN AH KIAN v. HAJI HASNAN

[O. C. J. (Gill J.) September 27, 1962]

[K.L. — Civil Suit No. 268 of 1960]

Contract — Sub-contract to lay roads — Work to be completed within stipulated date — Work not so completed — Termination of sub-contract without notice — Whether termination proper — Whether time of the essence — Contracts (Malay States) Ordinance, 1950, s.56 — Damages for breach of warranty — Claim in quantum meruit.

The defendant entered into agreement with the District Officer, Kuala Selangor, for the making of certain roads. He sub-contracted with the plaintiff for the completion of this work. A clause in the sub-contract provided for the whole work to be completed within the 30th day of May, 1960.

On May 30, 1960, the plaintiff had not completed the work. The defendant sent him a letter terminating the sub-contract without notice and arranged for the uncompleted work to be finished by someone else. The plaintiff asked for an extension of time to complete the work but no extension was granted.

The plaintiff brought an action for damages for breach of contract, alternatively for payment of a sum on the basis of *quantum meruit*.

Held: (1) there was no express stipulation making time of the essence of the contract and neither from the nature of the contract nor its subject matter nor from the intention of the parties could it be said that time had been made of the essence;

(2) the defendant was in consequence not entitled to terminate the sub-contract without giving the plaintiff notice to complete within a reasonable period and his action amounted to a breach of contract;

(3) the proper remedy of the plaintiff was in *quantum meruit* and not in damages and there should be judgment for the plaintiff for the amount he actually spent in the performance of the sub-contract.

Observations on principles as to time being the essence of the contract.

Observations on *quantum meruit*.